

The Honorable Robert S. Lasnik  
Oral Argument Requested

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUCRETIA JAMES,

Defendant.

2:08-cr-00244-RLS-3

OPPOSITION TO  
DEFENDANT'S MOTION TO  
SEAL AND REPLY FOR CBC'S  
MOTION TO INTERVENE AND  
UNSEAL SENTENCING  
RECORDS FOR LUCRETIA  
JAMES

Note on Motion Calendar: October  
2, 2009

CBC objects to Ms. James' filing of her opposition brief under seal. *See* Docket # 72, 73, 74, . The motion offers no legal argument or other justification for sealing her opposition brief. Instead, Ms. James submits under seal a declaration from her counsel. CBC urges the Court to reject this secret communication. *See U.S. v. Edwards*, 101 F.3d 17 (2d Cir. 1996) (holding that refusing to seal two letters from defendant to judge was not error). At minimum, Ms. James's moving papers should be unsealed. *See In re Copley Press, Inc.*, 518 F.3d at 1028 (holding that the media had a right of access to a motion to seal and the memorandum supporting the seal). "Public confidence cannot long be maintained where important judicial decisions are made behind closed doors and then

REPLY AND OPPOSITION: CBC'S MOTION TO  
INTERVENE & UNSEAL — 1

Davis Wright Tremaine LLP  
LAW OFFICES  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
(206) 622-3150 • Fax: (206) 757-7700

announced in conclusive terms to the public, with the record supporting the court's decision sealed from public view." *Gannett Co. v. DePasquale*, 443 U.S. 368, 429 (1979) (citation omitted).

Without knowing the basis for sealing the opposition brief, CBC cannot offer specific argument, but refers the Court to its initial moving papers and its discussion of the high burden placed on Ms. James as the party seeking to keep the documents secret. CBC also urges the Court to consider less restrictive alternatives, including providing redacted versions of these sealed documents and providing the documents to CBC's attorneys for their eyes only so that they may provide more substantive oral arguments.

The Court should order the documents filed in opposition be unsealed immediately. Lifting the shroud of secrecy on these documents is mandated under the First Amendment and the common law.

DATED this 2<sup>nd</sup> day of October, 2009.

Davis Wright Tremaine LLP  
Attorneys for the Canadian Broadcasting  
Corporation

By 

Bruce E.H. Johnson, WSBA No. 7667  
Sarah K. Duran, WSBA No. 38954  
1201 Third Avenue, Suite 2200  
Seattle, WA 98101-3045  
Telephone: (206) 622-3150  
(206) 757-8035  
Fax: (206) 757-7700  
E-mail: brucejohnson@dwt.com  
sarahduran@att.net

REPLY AND OPPOSITION: CBC'S MOTION TO  
INTERVENE & UNSEAL — 2

DWT 13410324v1 0090291-000001

Davis Wright Tremaine LLP  
LAW OFFICES  
1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
(206) 622-3150 · Fax: (206) 757-7700